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No. 71-710

Supreme Court, U.S.
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In the Supreme Court of the United States

OCTOBER TERM, 1971

MAX SCHARFMAN, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ERWIN N. GRISWOLD,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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After a jury trial in the United States District Court for the Southern District of New York, petitioner was convicted of having possessed furs stolen from an interstate shipment, knowing them to have been stolen, in violation of 18 U.S.C. 659. He was sentenced to two years' imprisonment. The court of appeals affirmed (Pet. App. A).

Petitioner's sole contentions here, as below, relate to the denial of his pre-trial motions to suppress evidence seized by F.B.I. agents pursuant to a search warrant. The seized evidence included books and records of two

corporations owned by petitioner. Petitioner's claim that the affidavits in support of the search warrant failed to establish probable cause is fully answered in the opinion below. Petitioner also contends that the decision below is in conflict with *Hill* v. *Philpott*, 445 F. 2d 1147 (C.A. 7), certiorari denied December 14, 1971, No. 71-442, and *United States* v. *Blank*, 330 F. Supp. 783 (N.D. Ohio), appeal pending, No. 71-1849, C.A. 6, which hold that, in certain circumstances, privately owned books and records are protected by the Fifth Amendment self-incrimination clause from seizure even pursuant to a valid search warrant. Regardless of the correctness of those decisions,[1] they are not in point here. The books and records in this case did not belong to a private person but to corporations, as to whose property petitioner is not entitled to assert the Fifth Amendment privilege against compulsory self-incrimination. See *Campbell Painting Corp.* v. *Reid*, 392 U.S. 286.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

JANUARY 1972.

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[1] In the government's view, the *Philpott* and *Blank* decisions, the latter of which is closer than *Philpott* to the facts of this case, are erroneous. See, *e.g.*, the contrary rulings in *United States* v. *Hanon*, 428 F. 2d 101, 106-107 (C.A. 8) (*en banc*), certiorari denied, 402 U.S. 952; *United States* v. *Clancy*, 276 F. 2d 617, 629-631 (C.A. 7), reversed on other grounds, 365 U.S. 312; see also *Stanley* v. *Georgia*, 394 U.S. 557, 569-571 (Stewart, J. concurring, joined by Justices Brennan and White).

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